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November 14, 2005

**HAND DELIVERY**

Honorable Ron Jones, Chairman  
c/o Sharla Dillon, Docket & Records Manager  
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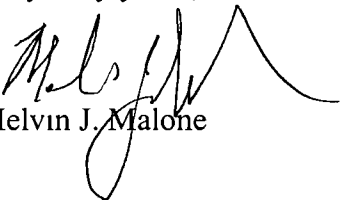
***RE: In Re: Petition of Cellco Partnership d/b/a Verizon Wireless for  
Arbitration Under the Telecommunications Act of 1996  
TRA Consolidated Docket No. 03-00585***

Dear Chairman Jones:

Enclosed please find an original and thirteen (13) copies of the CMRS Providers' Request for Consideration of the Parties' Respective September 28 and October 18, 2005 Filings Regarding Cost Methodologies and for Re-Establishment of a Procedural Schedule to Establish Permanent Rates.

Also enclosed is an additional copy to be "File Stamped" for our records. All parties of record have been served. If you have any questions or require additional information, please let me know.

Very truly yours,



Melvin J. Malone

MJM kdn

Enclosures

cc. Parties of Record

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

**Petition of:**

**Cellco Partnership d/b/a Verizon  
Wireless For Arbitration Under the  
Telecommunications Act of 1996**

**Consolidated Docket  
No. 03-00585**

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**CMRS PROVIDERS' REQUEST FOR CONSIDERATION OF THE PARTIES'  
RESPECTIVE SEPTEMBER 28 AND OCTOBER 18, 2005 FILINGS REGARDING  
COST METHODOLOGIES AND FOR RE-ESTABLISHMENT OF A PROCEDURAL  
SCHEDULE TO ESTABLISH PERMANENT RATES**

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Petitioners Cellco Partnership d/b/a Verizon Wireless; New Cingular Wireless PCS, LLC d/b/a Cingular Wireless; Sprint Spectrum L.P. d/b/a Sprint PCS; and T-Mobile USA, Inc., (collectively referred to herein as "the CMRS Providers") respectfully submit this Request for Consideration of the Parties' Respective September 28 and October 18, 2005 Filings Regarding Cost Methodologies and for Re-establishment of a Procedural Schedule to Establish Permanent Rates (the "Request"). In support of this Request, the CMRS Providers submit the following.

**I. INTRODUCTION**

With the sole exception of establishing permanent rates for transport and termination, this Authority has resolved all of the issues in this arbitration.<sup>1</sup> Consistent with the January 12, 2005,

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<sup>1</sup> TRA Transcript of Proceedings, *In Re Cellco partnership d/b/a/ Verizon Wireless for Arbitration Under the Telecommunications Act of 1996*, TRA Consolidated Docket No 03-00585 (the "Jan 12, 2005 Transcript")

deliberations,<sup>2</sup> on May 27, 2005, the Hearing Officer in this matter issued, *sua sponte*, a Notice of Status Conference “for the purpose of discussing the process the Authority should undertake to determine a permanent rate for reciprocal compensation.”<sup>3</sup> Since that time, the Hearing Officer has determined that the rates must be symmetrical and that each ICO’s costs must be company specific.<sup>4</sup> In addition, a procedural schedule was adopted that provided a clear path to the establishment of permanent rates, including the submission of cost studies by December 7, 2005, and culminating in hearings scheduled for May 2006.<sup>5</sup> As part of that schedule, a process was set up – pursuant to a request by the Rural Coalition of Small LECs and Cooperatives (the “ICOs”) – for the parties to either agree to an appropriate cost methodology or for the Authority to make a determination as to the appropriateness of any particular ICO proposal.<sup>6</sup> In this regard, all the parties have taken considerable steps towards moving this docket forward in accordance with the procedural schedule and the directions of the panel on September 7, 2005. At no time

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<sup>2</sup> *January 12, 2005 Transcript* at 67 (“It is my intention to move as expeditiously as possible to establish permanent rates, because I think we have a duty to do that”) (Comment of TRA Director/Panel Member)

<sup>3</sup> Notice of Status Conference, *In Re Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless for Arbitration Under the Telecommunications Act of 1996*, TRA Consolidated Docket No. 03-00585 (May 27, 2005)

<sup>4</sup> TRA Transcript of Proceedings, *In Re Cellco Partnership d/b/a Verizon Wireless for Arbitration Under the Telecommunications Act of 1996*, TRA Consolidated Docket No. 03-00585 at 4 22-24 (July 21, 2005) (the “*July 21, 2005 Transcript*”)

<sup>5</sup> Order Establishing Procedural Schedule for Rate Phase of Proceeding, *In Re Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless Under the Telecommunications Act of 1996*, TRA Consolidated Docket No. 03-00585 (Aug. 24, 2005)

<sup>6</sup> *See e.g., July 21, 2005 Transcript* at 27 12 – 28 2, *see also id.* at 30 1-3 (“MR. RAMSEY: If we have a dispute on what the methodology proposals are, we would ask you to resolve that[.]”) *See also* TRA Transcript of Proceedings, *In Re Cellco Partnership d/b/a Verizon Wireless for Arbitration Under the Telecommunications Act of 1996*, TRA Consolidated Docket No. 03-00585 at 70 9-11 (Sept. 7, 2005) (the “*September 7, 2005 Transcript*”) (“And Mr. Ramsay, let me remind you that this – you know, settling on a formula was your idea”) (Comment of TRA Director/Panel Member), and *September 7, 2005 Transcript* at 77 6-9

has the absence of an order been a deterrence to the parties' respective abilities to comply with the briefing schedule adopted by the Hearing Officer.

On October 25, 2005, however, the procedural schedule in this proceeding was suspended pending both the issuance of the order "memorializing the arbitration panel's January 12, 2005 decisions" and a determination "concerning the specific methodologies and formulas to be utilized by the coalition members in performing their cost studies"<sup>7</sup> The CMRS Providers hereby respectfully (a) submit that although the issuance of the decision regarding the January 12, 2005 deliberations is anticipated by all parties, it is not (and has not been) a prerequisite to the determination of the permanent rates and (b) further request that the panel consider the most recent filings by the parties on the proposed cost methodologies put forward by the ICOs, and rule on the appropriateness of those methodologies. The CMRS Providers believe that further delay of the procedural schedule will only perpetuate any remaining uncertainty over the parties' respective rights and obligations to interconnect under the Federal Telecommunications Act of 1996.

## II. DISCUSSION

### 1. The Cost Methodology Phase was Intended to Simplify – Not Derail – the Establishment of Permanent Rates

The current cost methodology phase of this proceeding, while admittedly unique, was not intended to derail the establishment of permanent rates in this proceeding.<sup>8</sup> In fact, at the July

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<sup>7</sup> Order Suspending Procedural Schedule, *In Re Cellco Partnership d/b/a Verizon Wireless for Arbitration Under the Telecommunications Act of 1996*, TRA Consolidated Docket No. 03-00585 at 3 (Oct. 25, 2005).

<sup>8</sup> See, e.g., *September 7, 2005 Transcript* at 82 ("Because the whole point of this was to save time, not make additional time[ ]") (Comment of TRA Director/Panel Member).

21, 2005, Status Conference, the ICOs' counsel represented that he thought it would take "two or three weeks or so" for the ICOs to put forward their *specific (and detailed)* proposed methodologies.<sup>9</sup> Moreover, in anticipation of a possible disagreement over whether those methodologies would be consistent with the TELRIC methodology required by the Authority,<sup>10</sup> the ICOs' counsel also represented that he would expect the Authority to make a determination at the hearing then scheduled for September 7, 2005.<sup>11</sup>

Instead, as the Authority is well aware, the initial ICO submissions of August 11, 2005 were found to be inadequate and the ICOs were instructed to file more detailed submissions, which would allow both the Authority and the CMRS Providers to evaluate whether the proposed methodologies were TELRIC compliant.<sup>12</sup>

As directed at the September 7, 2005, Oral Argument Hearing, the ICOs submitted the *Proposed Cost Study Methodology and Model Descriptions filed on Behalf of the Rural Coalition* on September 28, 2005, and the CMRS Providers submitted the *Response of CMRS*

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<sup>9</sup> See July 21, 2005 Transcript at 9 17-21

<sup>10</sup> January 12, 2005 Transcript at 38-40 At the January 12, 2005, deliberations, the Panel concluded that the rates proposed by the ICOs were not TELRIC compliant because the rates offered by the ICOs were derived from their "interstate access" studies *Id* at 39 Moreover, the Panel determined that the ICOs' proposed rates were "not compliant with the required TELRIC methodology" *Id* See also Interim Order on Phase I of Proceeding to Establish Prices for Interconnection and Unbundled Network Elements, *In Re Petition to Convene a Contested Case Proceeding to Establish Permanent Prices for Interconnection and Unbundled Network Elements*, TRA Docket No 97-01262 at 8 (Jan 25, 1999) (The TRA specifically held, in establishing interconnection and UNE rates for BellSouth, that "prices should be established using the forward-looking economic cost methodology as defined by the FCC's TELRIC methodology[ ]").

<sup>11</sup> See e.g., July 21, 2005 Transcript at 29 23- 30 4 See also Notice of Hearing, *In Re Cellco Partnership d/b/a Verizon Wireless for Arbitration Under the Telecommunications Act of 1996*, TRA Consolidated Docket No 03-00585 (Sept 1, 2005) ("The arbitration panel assigned to this docket, Chairman Ron Jones, Director Deborah Taylor Tate and Director Pat Miller, will hear arguments and testimony on any disputed issues arising from the parties' filings of August 11, 2005 and August 31, 2005 regarding the appropriate methodology for TELRIC cost studies")

<sup>12</sup> See September 7, 2005 Transcript at 45-50, 53 and 61 (The panel concluded that the ICOs' August 11<sup>th</sup> filing did not provide sufficient information for an evaluation of whether the ICOs' proposed methodologies are TELRIC-compliant )

*Providers to Cost Study Methodologies and Model Descriptions Proposed by Rural Coalition* on October 18, 2005.<sup>13</sup> These recent filings confirm, yet again, that material disagreements remain between the ICOs and the CMRS Providers on what does, and does not, constitute a TELRIC-compliant methodology/model.<sup>14</sup>

In an attempt to move this matter forward, the CMRS Providers have set forth several guiding TELRIC principles that are essential to any cost study the ICOs might ultimately submit.<sup>15</sup> Moreover, the CMRS Providers remain open to further dialogue with the ICOs with respect to appropriate, TELRIC-compliant methodology. In fact, the CMRS Providers also remain open to a discussion of rates. As of November 8-9, 2005, the parties have commenced preliminary discussions regarding, among other things, appropriate TELRIC methodology and rates.<sup>16</sup> Notwithstanding the foregoing, however, the differences between the parties' positions on TELRIC-compliant methodologies are significant and the parties' recent filings reflect the depth of those differences. Accordingly, and as contemplated, the arbitration panel's timely consideration of the most recent filings of the parties regarding the ICOs' proposed

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<sup>13</sup> See *September 7, 2005 Transcript* at 81. See also *Order Granting Extension of Time, In Re Cellco Partnership d/b/a Verizon Wireless for Arbitration Under the Telecommunications Act of 1996*, TRA Consolidated Docket No. 03-00585 (Oct. 25, 2005) (Extending due date for CMRS Providers' responsive filing for good cause shown.)

<sup>14</sup> The CMRS Providers note that the reason this phase has become so problematic is likely a reflection of a more fundamental disagreement over whether the proposed cost methodologies need to be TELRIC compliant. The CMRS Providers, as noted throughout this proceeding, believe that the Authority, the FCC and the courts all require TELRIC-based cost studies. The ICOs, on the other hand, continue to take issue with their obligation to put forward TELRIC-based cost studies. See e.g., *July 21, 2005 Transcript* at 8:19-25. In fact, the ICOs have been clear that they do still maintain their position that the Authority lacks the jurisdiction to conduct this arbitration. See e.g., *September 7, 2005 Transcript* at 7.

<sup>15</sup> Response of CMRS Providers to Cost Study Methodologies and Model Descriptions Proposed by Rural Coalition, *In Re Cellco partnership d/b/a/ Verizon Wireless for Arbitration Under the Telecommunications Act of 1996*, TRA Consolidated Docket No. 03-00585 (Oct. 18, 2005).

<sup>16</sup> If the parties are able to come to agreement on any particular issues, the parties will promptly notify the Authority.

(continued...)

methodologies and the re-establishment of a procedural schedule will move this proceeding forward in an expeditious manner.<sup>17</sup>

2. A Procedural Schedule Should be Re-established so that Permanent Rates Can be Established

As the Authority has properly recognized, the establishment of permanent rates in this proceeding is critical.<sup>18</sup> However, without a procedural schedule requiring the submission of TELRIC-compliant cost studies, along with a process for evaluating such cost studies, no such rates will be established and the proceeding will be locked in a perpetual state of suspension.

The CMRS Providers also note that during this phase of the proceeding, and without the benefit of any order regarding the first phase of this arbitration, the ICOs have the right – and indeed the obligation - to avail themselves of interim rates (subject to true-up) at agreed upon factors.<sup>19</sup> Thus, there does not seem to be any need to suspend the proceedings at this stage in anticipation of any such order.

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(..continued)

<sup>17</sup> See, e.g., *September 7, 2005 Transcript* at 55, 57, and 77-81. See also, e.g., *September 7, 2005 Transcript* at 81 (After the parties submit the second round of methodological filings, “then we’ll deliberate[ ]”) (Comment of TRA Director/Panel Member), see also *id.* at 72.17-19 (“[T]he long and short of it is y’all are going to disagree on this and we’re going to have to decide”) (Comment of TRA Director and panel member).

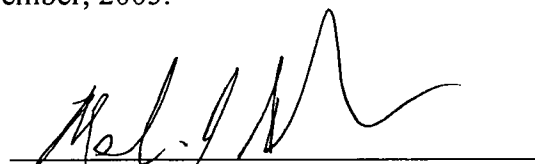
<sup>18</sup> See, e.g., *January 12, 2005 Transcript* at 67 (“I think it’s incumbent on us to make sure that we establish a permanent price in these matters as expeditiously as we possibly can . . . I am going to push it to a conclusion as quickly as I can”) (Comment of TRA Director/Panel Member). See also, e.g., CMRS Providers’ Status Report and Request Regarding Post-Arbitration Matters, *In Re Cellco Partnership d/b/a Verizon Wireless for Arbitration Under the Telecommunications Act of 1996*, TRA Consolidated Docket No. 03-00585 at 2 (June 1, 2005) (“It is well known that the Parties to this collective negotiation and arbitration have been operating without interconnection agreements since May of 2003, when these negotiations formally began. Under the circumstances, the continued absence of interconnection agreements materially interferes with both the legitimate business needs of the CMRS Providers and their ability to serve Tennessee’s consumers.”).

<sup>19</sup> See, e.g., Response of CMRS Providers to Cost Study Methodologies Proposed by the Rural Coalition, *In Re Cellco Partnership d/b/a Verizon Wireless for Arbitration Under the Telecommunications Act of 1996*, TRA Consolidated Docket No. 03-00585 at 3, n. 6 (Aug. 31, 2005) (“[N]o individual ICO has agreed to accept or pay compensation at the interim rate previously set by the TRA in this docket.”).

### III. PRAYER FOR RELIEF

For the foregoing reasons, and to avoid further delay, the CMRS Providers respectfully request that the arbitration panel determine whether any of the ICOs' proposed methodologies/models are TELRIC-compliant and re-establish a procedural schedule for the establishment of permanent rates in this proceeding on November 21, 2005, following the Authority's November 21, 2005, Conference<sup>20</sup>

Respectfully submitted this 14th day of November, 2005.



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<sup>20</sup> The CMRS Providers are mindful that certain parts of the former procedural schedule will likely have to be adjusted to account for the time it has been suspended, but the CMRS Providers remain hopeful that at least the current hearing dates can be maintained

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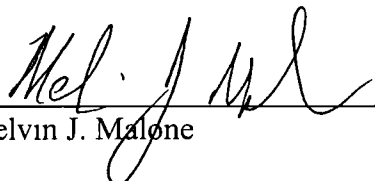
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## CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2005, a true and correct copy of the foregoing has been served on the parties of record, via the method indicated.

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